



August 23, 2023

The Honorable Judge Margo K. Brodie
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*
Case No. 1:05-MD-1720 (MKB)(VMS)

Dear Judge Brodie:

We write as Class Counsel for the Rule 23(b)(3) Settlement Class ("Settlement Class Counsel") in response to the letter of August 21, 2023 regarding the Court's Order Appointing Special Master, ECF No. 8883, by counsel for the Old Jericho plaintiffs (the "Old Jericho" counsel). Those counsel also claim to represent a class of *indirect* purchaser gas retailers.

Old Jericho counsel pose a series of questions relating to claims administration and the procedures before the Special Master that they seek to discuss at the upcoming status conference. Settlement Class Counsel welcome the opportunity to discuss these issues and will include these issues in the Status Conference Report which we will draft in consultation with Defendants and other counsel.

In the hope of clarifying that discussion, we offer the following observations. The Old Jericho plaintiffs repeatedly assert that they are indirect purchasers and not direct purchasers of card services from the defendants. As indirect purchasers, these Old Jericho plaintiffs are not members of the class; the class is comprised only of direct purchasers of card services from defendants. We continue in our belief that the Old Jericho plaintiffs may be heard with respect to the special master proceedings, but we believe their interests, as indirect plaintiffs, are only to make sure that the special master proceedings do not unduly affect their non-class interests as indirect purchasers.

In addition to the Old Jericho plaintiffs, the Court has before it two other groups purporting to represent retail gas stations. The Fikes group claiming direct purchaser status and the Jack Rabbit group also claiming direct purchaser status under an *Illinois Brick* exception. As a result, Settlement Class Counsel does see the benefit of expediting a determination of some of the issues raised by Old Jericho counsel. We are prepared to discuss these issues at the upcoming status conference, including whether these

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determinations should be made by the Court, in the first instance, or by referral to the Special Master.

Respectfully submitted,

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cc: All Counsel via ECF